

STATE OF NEW YORK

8147

IN SENATE

January 26, 2022

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the social services law, in relation to requiring health insurance policies and medicaid to cover biomarker testing for certain purposes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subsection (i) of section 3216 of the insurance law is
2 amended by adding a new paragraph 11-b to read as follows:

3 (11-b) (A) Every policy which provides medical, major medical, or
4 similar comprehensive-type coverage shall provide coverage for biomarker
5 testing for the purposes of diagnosis, treatment, appropriate manage-
6 ment, or ongoing monitoring of a covered person's disease or condition
7 when the test is supported by medical and scientific evidence, includ-
8 ing, but not limited to:

9 (i) labeled indications for a test approved or cleared by the food and
10 drug administration of the United States government or indicated tests
11 for a food and drug administration approved drug;

12 (ii) centers for medicare and medicaid services national coverage
13 determinations and medicare administrative contractor local coverage
14 determinations; or

15 (iii) nationally recognized clinical practice guidelines and consensus
16 statements.

17 (B) Such coverage shall be provided in a manner that shall limit
18 disruptions in care including the need for multiple biopsies or biospe-
19 cimen samples.

20 (C) The covered person and prescribing practitioner shall have access
21 to a clear, readily accessible, and convenient process to request an
22 exception to a coverage policy provided pursuant to the provisions of
23 this paragraph. Such process shall be made readily accessible on the
24 website of the insurer.

25 (D) As used in this paragraph, the following terms shall have the
26 following meanings:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13311-02-2

1 (i) "Biomarker" means a characteristic that is objectively measured
2 and evaluated as an indicator of normal biological processes, pathogenic
3 processes, or pharmacologic responses to a specific therapeutic inter-
4 vention. Biomarkers include but are not limited to gene mutations or
5 protein expression.

6 (ii) "Biomarker testing" means the analysis of a patient's tissue,
7 blood, or other biospecimen for the presence of a biomarker. Biomarker
8 testing includes but is not limited to single-analyte tests, multi-plex
9 panel tests, and whole genome sequencing.

10 (iii) "Consensus statements" means statements developed by an inde-
11 pendent, multidisciplinary panel of experts utilizing a transparent
12 methodology and reporting structure and with a conflict of interest
13 policy. Such statements are aimed at specific clinical circumstances and
14 base the statements on the best available evidence for the purpose of
15 optimizing the outcomes of clinical care.

16 (iv) "Nationally recognized clinical practice guidelines" means
17 evidence-based clinical practice guidelines developed by independent
18 organizations or medical professional societies utilizing a transparent
19 methodology and reporting structure and with a conflict of interest
20 policy. Clinical practice guidelines establish standards of care
21 informed by a systematic review of evidence and an assessment of the
22 benefits and costs of alternative care options and include recommenda-
23 tions intended to optimize patient care.

24 § 2. Subsection (1) of section 3221 of the insurance law is amended by
25 adding a new paragraph 11-b to read as follows:

26 (11-b) (A) Every insurer delivering a group or blanket policy or issu-
27 ing a group or blanket policy for delivery in this state that provides
28 coverage for medical, major medical, or similar comprehensive-type
29 coverage shall provide coverage for biomarker testing for the purposes
30 of diagnosis, treatment, appropriate management, or ongoing monitoring
31 of a covered person's disease or condition when the test is supported by
32 medical and scientific evidence, including, but not limited to:

33 (i) labeled indications for a test approved or cleared by the food and
34 drug administration of the United States government or indicated tests
35 for a food and drug administration approved drug;

36 (ii) centers for medicare and medicaid services national coverage
37 determinations and medicare administrative contractor local coverage
38 determinations; or

39 (iii) nationally recognized clinical practice guidelines and consensus
40 statements.

41 (B) Such coverage shall be provided in a manner that shall limit
42 disruptions in care including the need for multiple biopsies or biospe-
43 cimen samples.

44 (C) The covered person and prescribing practitioner shall have access
45 to a clear, readily accessible, and convenient process to request an
46 exception to a coverage policy provided pursuant to the provisions of
47 this paragraph. Such process shall be made readily accessible on the
48 website of the insurer.

49 (D) As used in this paragraph, the following terms shall have the
50 following meanings:

51 (i) "Biomarker" means a characteristic that is objectively measured
52 and evaluated as an indicator of normal biological processes, pathogenic
53 processes, or pharmacologic responses to a specific therapeutic inter-
54 vention. Biomarkers include but are not limited to gene mutations or
55 protein expression.

1 (ii) "Biomarker testing" means the analysis of a patient's tissue,
2 blood, or other biospecimen for the presence of a biomarker. Biomarker
3 testing includes but is not limited to single-analyte tests, multi-plex
4 panel tests, and whole genome sequencing.

5 (iii) "Consensus statements" means statements developed by an inde-
6 pendent, multidisciplinary panel of experts utilizing a transparent
7 methodology and reporting structure and with a conflict of interest
8 policy. Such statements are aimed at specific clinical circumstances and
9 base the statements on the best available evidence for the purpose of
10 optimizing the outcomes of clinical care.

11 (iv) "Nationally recognized clinical practice guidelines" means
12 evidence-based clinical practice guidelines developed by independent
13 organizations or medical professional societies utilizing a transparent
14 methodology and reporting structure and with a conflict of interest
15 policy. Clinical practice guidelines establish standards of care
16 informed by a systematic review of evidence and an assessment of the
17 benefits and costs of alternative care options and include recommenda-
18 tions intended to optimize patient care.

19 § 3. Section 4303 of the insurance law is amended by adding a new
20 subsection (p-1) to read as follows:

21 (p-1) (1) A medical expense indemnity corporation, a hospital service
22 corporation or a health service corporation that provides coverage for
23 medical, major medical, or similar comprehensive-type coverage shall
24 provide coverage for biomarker testing for the purposes of diagnosis,
25 treatment, appropriate management, or ongoing monitoring of a covered
26 person's disease or condition when the test is supported by medical and
27 scientific evidence, including, but not limited to:

28 (A) labeled indications for a test approved or cleared by the food and
29 drug administration of the United States government or indicated tests
30 for a food and drug administration approved drug;

31 (B) centers for medicare and medicaid services national coverage
32 determinations and medicare administrative contractor local coverage
33 determinations; or

34 (C) nationally recognized clinical practice guidelines and consensus
35 statements.

36 (2) Such coverage shall be provided in a manner that shall limit
37 disruptions in care including the need for multiple biopsies or biospe-
38 cimen samples.

39 (3) The covered person and prescribing practitioner shall have access
40 to a clear, readily accessible, and convenient process to request an
41 exception to a coverage policy provided pursuant to the provisions of
42 this subsection. Such process shall be made readily accessible on the
43 website of the insurer.

44 (4) As used in this subsection, the following terms shall have the
45 following meanings:

46 (A) "Biomarker" means a characteristic that is objectively measured
47 and evaluated as an indicator of normal biological processes, pathogenic
48 processes, or pharmacologic responses to a specific therapeutic inter-
49 vention. Biomarkers include but are not limited to gene mutations or
50 protein expression.

51 (B) "Biomarker testing" means the analysis of a patient's tissue,
52 blood, or other biospecimen for the presence of a biomarker. Biomarker
53 testing includes but is not limited to single-analyte tests, multi-plex
54 panel tests, and whole genome sequencing.

55 (C) "Consensus statements" means statements developed by an independ-
56 ent, multidisciplinary panel of experts utilizing a transparent method-

ology and reporting structure and with a conflict of interest policy. Such statements are aimed at specific clinical circumstances and base the statements on the best available evidence for the purpose of optimizing the outcomes of clinical care.

(D) "Nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines developed by independent organizations or medical professional societies utilizing a transparent methodology and reporting structure and with a conflict of interest policy. Clinical practice guidelines establish standards of care informed by a systematic review of evidence and an assessment of the benefits and costs of alternative care options and include recommendations intended to optimize patient care.

§ 4. Subdivision 2 of section 365-a of the social services law is amended by adding a new paragraph (jj) to read as follows:

(jj) (i) biomarker testing for the purposes of diagnosis, treatment, appropriate management, or ongoing monitoring of a recipient's disease or condition when the test is supported by medical and scientific evidence, including, but not limited to:

(1) labeled indications for a test approved or cleared by the food and drug administration of the United States government or indicated tests for a food and drug administration approved drug;

(2) centers for medicare and medicaid services national coverage determinations and medicare administrative contractor local coverage determinations; or

(3) nationally recognized clinical practice guidelines and consensus statements.

(ii) Risk-bearing entities contracted to the medicaid program to deliver services to recipients shall provide biomarker testing at the same scope, duration and frequency as the medicaid program otherwise provides to enrollees.

(iii) The recipient and participating provider shall have access to a clear, readily accessible, and convenient process to request an exception to a coverage policy of the medicaid program or by risk-bearing entities contracted to the medicaid program. Such process shall be made readily accessible to all participating providers and enrollees online.

(iv) As used in this paragraph, the following terms shall have the following meanings:

(1) "Biomarker" means a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes, or pharmacologic responses to a specific therapeutic intervention. Biomarkers include but are not limited to gene mutations or protein expression.

(2) "Biomarker testing" means the analysis of a patient's tissue, blood, or other biospecimen for the presence of a biomarker. Biomarker testing includes but is not limited to single-analyte tests, multi-plex panel tests, and whole genome sequencing.

(3) "Consensus statements" means statements developed by an independent, multidisciplinary panel of experts utilizing a transparent methodology and reporting structure and with a conflict of interest policy. Such statements are aimed at specific clinical circumstances and base the statements on the best available evidence for the purpose of optimizing the outcomes of clinical care.

(4) "Nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines developed by independent organizations or medical professional societies utilizing a transparent methodology and reporting structure and with a conflict of interest

1 policy. Clinical practice guidelines establish standards of care
2 informed by a systematic review of evidence and an assessment of the
3 benefits and costs of alternative care options and include recommenda-
4 tions intended to optimize patient care.

5 § 5. This act shall take effect January 1, 2023 and shall apply to all
6 policies and contracts issued, renewed, modified, altered or amended on
7 or after such date.